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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,500	01/16/2001	John H. Schneider	769-275	5911
29540	7590	04/20/2004	EXAMINER	
PITNEY HARDIN LLP 685 THIRD AVENUE NEW YORK, NY 10017-4024			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/761,500	Applicant(s) SCHNEIDER ET AL.	
	Examiner Jes F. Pascua	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/24/04 has been entered.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification fails to provide antecedence for the language "distal end".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thompson et al. '779. See Fig. 4.

The distal ends of first and second flanges 26, 27 meet at nose portion 25, which is free of attachment to the first and second walls 10, 11. Therefore, the limitation that the distal ends of the first and second flange portions are "free of attachment" to the first and second walls is met by Thompson et al. '779.

5. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tilman et al. '254.

In column 7, lines 46-48, Tilman et al. '254 discloses, "In some embodiments, tamper evident structures can use principles described in U.S. Pat. No. 5,713,669, **incorporated by reference herein.**" (emphasis added). U.S. Pat. No. 5,713,669 (Thomas et al.) discloses that a fold or a peelable seal may connect wall segments, which extend above zipper profiles to each other.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilman et al. '254 in view of Thomas et al.

Tilman et al. '254 discloses the claimed invention except that Tilman et al. '254 shows the slider access by tearing scores or perforations along the closed edge 18 instead of peeling apart the segments 19, 20. Thomas et al. shows that peeling apart analogous segments in order to access an analogous slider is an equivalent structure known in the art. Therefore, because these two slider accessing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a peelable seal for lines of weakening.

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit '369 in view of Thomas et al.

Ausnit '369 discloses the claimed invention except that Ausnit '369 shows the slider access by tearing lines of weakness instead of peeling apart the segments. Thomas et al. shows that peeling apart analogous segments in order to access an analogous slider is an equivalent structure known in the art. Therefore, because these two slider accessing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a peelable seal for lines of weakening.

9. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al.

Thomas et al. discloses the claimed invention except for the wall segments 36, 38 being formed from package walls 12, 14. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to form the wall segments of Thomas et al. from the package walls, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

### ***Response to Arguments***

10. Applicant's arguments filed 03/24/04 have been fully considered but they are not persuasive.

Applicant's arguments regarding the rejection of the claims under 35 U.S.C. 102(a) and 102(e) as being anticipated by the Thompson et al. and Tilman et al. references have been considered, but are not persuasive for the reasons set forth in the rejections.

Regarding applicant's argument, "that the manufacturing processes of the Tilman and Thomas reference are completely different...", the method of forming the device is not germane to the issue of patentability of the device itself. Furthermore, In response to applicant's argument that the Tilman et al. and Thomas et al. "references have widely different configurations and their combination with regard to certain features would inevitably result in conflicts of purpose", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the

primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Regarding applicant's argument against the rejection of the claims under 35 U.S.C. 103(a) as being unpatentable over Ausnit in view of Thomas et al, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant merely addresses the differences between the Ausnit and Thomas et al., but fails to specifically address the Examiner's reasoning set forth in the rejection.

Applicant's argument that to form the wall segments of Thomas et al. from the package walls, as proposed by the Examiner in the above rejection, "is not an obvious variation by way of 'forming in one piece an article which has been formerly been formed in two pieces put together'" is opinion unsupported by evidence.

### ***Conclusion***

11. This is a request for continued examination of applicant's earlier Application No. 09/761,500. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP

§ 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP